

Title Guaranty Division Board Meeting Minutes

December 5, 2006

Board Members Present:

Berneil Preul (by phone)
Catherine Hult (by phone)
Walter Murphy (by phone)
Mitchell Taylor

Staff Members Present:

Loyd Ogle, TGD Director
Matt White, TGD Deputy Director
Becky Petersen, TGD Director of
Field Operations
Linda Berg, TGD Director of Business
Development
Lon Kobernusz, IFA Accountant
Mark Thompson, IFA General Counsel
Susan Mock, TGD Administrative Assistant

Others Present:

Bob McCloney – Iowa Land Title Association
Vince Lintz – IFA Board President
Virginia Bordwell – IFA Board Member

Call to Order

Mr. Taylor called the December 5, 2006, meeting of the Title Guaranty Board of Directors to order at 10:30 a.m.

Review & Approval of Board Meeting Minutes

Motion: On a motion by Ms. Preul, seconded by Mr. Murphy, the Board unanimously approved the September 12, 2006, Board meeting minutes.

Review of Financial Reports, Transfer of Funds to IFA's Housing Programs, and Approval of Financial Reports

Mr. Kobernusz gave the financial report. Production is up, and costs are in line. He recommended a transfer of \$381,000 to IFA's Housing Programs.

Mr. Ogle told the Board that TGD exceeded its budget targets.

Motion: On a motion by Ms. Hult, seconded by Ms. Preul, the Board unanimously approved the transfer of \$381,000 to IFA's Housing Programs.

Motion: On a motion by Mr. Murphy, seconded by Ms. Hult, the Board unanimously approved the Financial Report.

Director's Report

Mr. Ogle gave the director's report. He discussed the proposed Master Contract with the Board. TGD has varying contracts for various programs with abstractors and attorneys. Staff condensed all the contracts into one contract. Mr. Ogle said the only substantive changes had to do with liability limits on coverage limits for attorneys and abstractors.

The Board and staff members discussed issues regarding the Master Contract. Mr. Taylor said one thing he noticed that the errors and omissions coverage under the abstractor's participation agreement had an unusually low amount, and now it is a quarter of a million dollars. He queried if ILTA had an issue with that. Mr. Ogle said he discussed the issue with ILTA, and he said there were two tiers for abstractors, depending on whether they are conducting closings or not. If they are not doing closings, there's a substantially lower threshold. Ms. Petersen said that for traditional abstracting, they are increasing the amount to \$250,000. If abstractors are going to participate in TGD's issuance and closing protection letter programs, then the limits are set the same as for attorneys. Mr. Taylor said that was a substantial change in the way they did business before.

Mr. Taylor made a query as to who would sign the abstractor's agreement and whether it will personally be guaranteed by anyone. Ms. Petersen said the abstractor's agreement should be signed by the duly authorized representatives of that particular company that owns the 40-year plant. Personal guarantees were not discussed. Mr. Taylor wondered whether abstractors should make personal guarantees like attorneys do. Mr. Ogle said they had not done that up to now, and that was something to discuss with ILTA and TGD's rating agency. Mr. McCloney said he believed ILTA would resist personal guarantees.

Mr. Murphy brought up Section 12 of the abstractor's participation agreement, and Ms. Hult brought up Section 9 of the attorney's participation agreement. Mr. Murphy thought the Board had already discussed the criminal and credit background checks on employees and their spouses and made an agreement about that issue. Mr. Ogle said the language simply gives TGD the right to conduct criminal and credit background checks if it so chooses. The rating agency said it is a standard clause throughout the industry nationally. While TGD wants to assert the right to do criminal and background checks, as a practical matter, checks would be done only in limited circumstances. Ms. Petersen said the paragraph is only applicable to those participants who are actually issuing Title Guaranty commitments and certificates and therefore eligible for the closing protection letter program. It does not apply to abstractors who are solely doing abstracting and attorneys who are solely issuing title opinions. Ms. Hult said the paragraph does not specifically say that the checks are only applicable to those participating in the program. Ms. Petersen and Ms. Hult discussed language in the agreement in regard to this issue. Ms. Hult and Mr. Murphy said they anticipated getting a lot of calls regarding the checks. This issue was discussed previously, and Mr. Ogle said the Board approved a program with the language there. Ms. Hult and Mr. Murphy thought the Board approved the program conditionally upon a revision of the language. Mr. Taylor requested the Board table the issue until they get the prior minutes regarding the language.

Mr. Thompson indicated that there needs to be a statement on the record that the reason the meeting is being held telephonically is because it was impractical, impossible, or inconvenient for the Board to convene in person.

Mr. Ogle discussed the approval of rate change for owner's policies. Owner's policies would be no charge. Right now, owner's policies are \$25. The issue was discussed with Demotech, and Title Guaranty is in a strong enough position to offer free owner's policies. It would have negligible or no impact on revenue. It will be limited to certain transactions. Symbolically, it will be a huge plus for Title Guaranty. It will not be implemented till April 2007 to give TGD time to educate the industry and lenders that this is coming.

Mr. Ogle read the following resolution:

WHEREAS, the Iowa Finance Authority (the "Authority") is a public instrumentality and agency of the State of Iowa (the "State") established and empowered by the provisions of Chapter 16 of the Code of Iowa, 2005, as amended, to issue title guaranties on real property located in the State through its Title Guaranty Division (the "Division"): and

WHEREAS, under Iowa Code, Chapter 16.91(1) the division board is authorized to set fees for Division services in an amount sufficient to permit the program to operate on a self-sustaining basis, and

WHEREAS, the Division desires to offer, upon request, Owner Certificates free of charge to homeowners when a lender certificate is purchased concurrently covering a purchase transaction when both Certificates are covering an amount of \$500,000 or less on a residential transaction, and

WHEREAS, after consultation with Division management this change will help the Division fulfill its statutory goals, and will be for the benefit of the people of the state of Iowa, and will improve their welfare by covering title defects under the terms of the Certificate, and

WHEREAS, the Division wants to implement this change effective April 1, 2007, and

NOW, THEREFORE BE IT RESOLVED By the Board of the Title Guaranty Division :

That after April 1, 2007 Owner Certificates will be offered free of charge upon request to homeowners when a lender certificate is purchased concurrently covering a purchase transaction when both Certificates are covering an amount of \$500,000 or less on a residential transaction, and that the Division is empowered to make the necessary changes to the Participation Manual, rate brochure, and any other documentation necessary to accomplish this goal.

Motion: On a motion by Ms. Preul, seconded by Mr. Murphy, the Board unanimously approved the resolution approving the rate change for owner's certificates.

The Board returned to the topic of Master Contracts. Mr. Ogle read through the May Board meeting minutes the abstractor issuance program with criminal and credit checks. They included with the application forms to be filled out giving approval for checks. When the Board approved the resolution approving the contracts, they eliminated those forms but retained the language in the contract saying that TGD had the right to ask for checks. Mr. Ogle recommended under Section 12 eliminating the last sentence. Then, if TGD asks for the check, it won't do so frivolously because TGD will pay for the cost of the checks. He also recommended putting a statement at the beginning of the section saying that it would only be under extraordinary circumstances that TGD would conduct criminal or credit checks.

Mr. Taylor recommended that the contract be amended to say that the participants will cooperate to the extent that they can in checks. Ms. Hult made a recommendation that the second sentence be revised to say that participants hereby agree to allow checks. Mr. Ogle said that second sentence would be changed to read, "The participant shall cooperate to the extent practical to allow Title Guaranty to conduct credit checks and criminal background checks as deemed necessary by Title Guaranty." Mr. Ogle also recommended deleting the last sentence about costs associated.

Ms. Bordwell asked if there was anything in writing regarding whether the reinsurer requires checks. Mr. Ogle said he is sure there is language on this issue in their underwriting manual which TGD is bound to comply with.

Mr. Taylor made a query regarding the second to last paragraph. He asked if it implies or creates liability personally to the person who signs the instrument, plus their partners, shareholders, and so forth. Mr. White replied that it says that the participant shall be personally liable. The participant is the individual if it is the attorney, and the participant is the company if it is the abstractor.

Motion: On a motion by Mr. Murphy, seconded by Ms. Preul, the Board unanimously approved the abstractor's participation agreement as amended with the following changes: On the criminal and background checks, the language will be changed to say the participant shall cooperate to the extent practical with Title Guaranty to conduct credit checks and background checks as deemed necessary, the last sentence regarding cost will be eliminated, and the sections referring to the words "personal liability" will be changed to the word "responsible."

Motion: On a motion by Mr. Murphy, seconded by Ms. Preul, the Board unanimously approved the attorney's participation agreement as amended with the following changes: On the criminal and background checks, the language will be changed to say the participant shall cooperate to the extent practical with Title Guaranty to conduct credit checks and background checks as deemed necessary, the last sentence regarding cost will be eliminated, and the sections referring to the words "personal liability" will be changed to the word "responsible."

Other Issues

Mr. Ogle said that he has been working with the ILTA on a certification program where they would test abstractor competence. They are still working on the details.

Mr. Ogle said TGD is contracted with Demotech to look at the program and do their analysis. TGD wants to maintain its A Prime Rating with them. He is going to talk to Demotech about raising the reinsurance rate to \$2 million or \$3 million on a residential transaction. This way TGD can keep more revenue and have more flexibility on smaller transactions.

Mr. Ogle said TGD is engaged in a discussion about abstracts in the context of Pottawattamie County with lenders, attorneys, and abstractors. He said they are exploring ways around the issue of Pottawattamie County's not having a functional abstract/opinion system. One of those ways is a 40-year search product, which raises a number of issues.

Mr. Ogle said that the American Land Title Association had developed new policy forms, 2006 Forms. In most transactions TGD uses the 1970 Forms. ALTA came out with forms in 1991, which TGD chose not to use because the coverage was not as good as the coverage provided in the 1970 Forms. ALTA came out with new forms in 2006. TGD is in the process of adopting the 2006 Forms and applying them to Iowa law.

Mr. Ogle discussed the Mortgage Release Program. He said the statutory limit on the dollar amount of the mortgage to be released is \$500,000. TGD is asking for a statutory change to allow the TGD Board to change that limit.

Mr. Ogle said that the issue they have been talking with the Iowa Bar Association about is the Unfair Deceptive Trade Practices Act to combat mortgage fraud. The other 49 states use this statute for a private cause of action. Iowa is the only state in the union where it is not allowed as a private cause of action; it can only be used by a county attorney in a criminal prosecution or by the state attorney general. TGD wants to support being able to use the act for a private cause of action to fight mortgage fraud.

Presentation of Commercial Department

Mr. Ogle discussed the idea of a commercial department. TGD is not competitive in the commercial area. TGD was structured to deal with residential transactions. Reinsuring with the Florida Fund on commercial deals has proven to be problematic. There are certain services that are standard in the industry that are offered by a title company that TGD does not offer.

Mr. Ogle said that implementing a commercial department would require hiring a couple of full-time people at a minimum.

Ms. Peterson noted that there were challenges to implementing a commercial department. It needs to be a full-service department as opposed to an a la carte service.

The Board discussed the presentation.

Deputy Director's Report

Mr. White gave the Deputy Director's Report. Since the last Board meeting, TGD has added nine claims to the pool.

Mr. White discussed the Mortgage Release Program. There have been about 1,400 requests, and it has facilitated several closings that would not have happened had TGD not been able to intervene. Soon TGD will get more of these transactions that are using the Rapid Certificate Program and the Closing Protection Letter Program.

Business Development Director's Report

Ms. Berg gave the Business Development Director's Report. She noted that with the change to an accrual system in accounting, sometimes the revenue numbers will not accurately reflect the real volume TGD is working on. She also focused on the field-issued area. She said TGD has moved 56 percent of its production to the field, compared to 37 percent in October 2005. Great progress was made with the conference in November, with positive feedback from lenders. TGD has picked up a couple of new lenders that do a high volume that had been using title insurance as a result of the conference. Some brochures are being updated. TGD plans to promote the free owner's certificates, first to lenders, then to borrowers.

Next Meeting Date and Time

The next Board meeting will be March 6, 2007, at 10:30 a.m.

Adjournment

Motion: On a motion by Ms. Preul, seconded by Mr. Murphy, the Board unanimously voted to adjourn at 12:24 p.m.

Dated this March 6, 2007,

Respectively submitted:

Approved as to form:

Loyd W. Ogle, Director
Title Guaranty Division

Mitch Taylor, Chair
Title Guaranty Division